

May 7, 1949

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ARIZONA ATTORNEY GENERAL

Wilson
Bryce H. Wilson, County Attorney
Pima County
Tucson, Arizona

Dear Bryce:

This will acknowledge your letter of May 3 requesting an opinion from this office on the following question: Does the Pima County Sanitary District #1 qualify as a political subdivision and will the bonds issued by the Sanitary District qualify as proper investments for pension and sinking funds of the State, State Loan Board, Industrial Commission, etc.?

We are of the opinion that Pima County Sanitary District #1 is a political subdivision within the meaning of Article 13, Section 7, as adopted by the people November 5, 1940. This constitutional provision states:

"(Improvement districts, political subdivisions.)--Irrigation, power, electrical, agricultural improvement, drainage, and flood control districts, and tax levying public improvements districts, now or hereafter organized pursuant to law, shall be political subdivisions of the state, and vested with all the rights, privileges and benefits, and entitled to the immunities and exemptions granted municipalities and political subdivisions under this Constitution or any law of the state or of the United States; but all such districts shall be exempt from the provisions of sections 7 and 8 of article 9 of this constitution."

The Sanitary District is a tax levying, public improvement district which has been organized pursuant to the Sanitary District Law, Sections 68-1001 to 68-1027 and, therefore, would seem to come within the meaning of the constitutional provisions.

Sanitary Districts are not mentioned specifically in the law, but we believe they come within the meaning of the words "tax levying public improvement districts", particularly since the District Improvement Act of 1945, Sections 16-2801 through 16-2858

includes sewer districts as one of the enumerated purposes of improvement districts. Section 16-2802 states in part:

"An improvement district may be established in any unincorporated town or settlement by the board of supervisors of the county in which the proposed district is located for the purpose of making street, sewer and other local improvements by special assessments in such districts, issuing bonds for such improvements and levying taxes to operate and maintain said improvements
* * * *"

Bonds issued by the Sanitary District under Section 16-2802 are therefore bonds of a political subdivision of the State of Arizona and, as such, are proper investments for any reserve or sinking fund which is allowed by statute to invest in bonds of political subdivisions. However, the investment of a reserve or sinking fund is governed by the particular provisions of the statute creating such fund and the types of allowable investments for the funds are enumerated in the statute and are exclusive. For example, Section 16-1806 of the Police Pension Act states in part:

" * * * It may invest, in the name of the board, that portion of the fund which in its judgment is available for investment, in such interest-bearing securities as are eligible by law for the investment of the surplus or reserve of the state compensation fund, * * * "

The surplus funds of the State Compensation Fund are limited to investments enumerated in Section 56-927:

" * * * bonds of the United States or federal land banks, of the state, or of any county, city, town or school district of the state, * * * or in registered state warrants * * * "

The Sanitary District bonds or other improvement district bonds are not included in this statute, and any statutory interpretation of a statute dealing with investment of public moneys must be given a strict rather than a liberal construction. Therefore, we are of the opinion that the Sanitary District bonds would not be proper bonds for purchase by the Police Pension Fund or the State Workmen's Compensation Fund.

Again, for example, Section 10-308 states in part:

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"The state treasurer, with the approval of the governor and secretary of state, shall invest any moneys in the permanent funds of the state, or other moneys authorized by law to be invested in securities as defined by law, in bonds of the United States, general obligations and improvement bonds of this state, or of the counties, incorporated cities and towns, or school districts thereof. Said moneys shall not be invested in bonds yielding a lower rate of interest than two (2) per cent per annum. * * *"

The same rule of statutory construction applied above, *expressio unius est exclusio alterius*, the express mention of one thing implies the exclusion of another, would seem to exclude investment of State funds in the Sanitary District bonds since the statute does not include improvement bonds of a district but only those of county, city or town.

We, therefore, advise that before investment in Sanitary District bonds, each prospective investor of reserve or pension funds should carefully review the statute creating such a fund to ascertain if bonds issued by an improvement district are investments allowed by such statute.

Trusting the above fully answers your inquiry, we remain

Yours very truly,

FRED O. WILSON
Attorney General

JOSEPH PYLE RALSTON
Assistant Attorney General

JPR:lh

cc: Pat. J. Ryder, c/o H. Dahlberg & Co., Tucson, Arizona
Chas. D. McCarty, Valley Nat'l Bldg., Tucson, Arizona